

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
 )  
SANMINA CORPORATION )  
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For Review of Site Cleanup )  
Requirements Order No. 92-107 of the )  
California Regional Water Quality )  
Control Board, San Francisco Bay )  
Region. Our File No. A-816. )  
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ORDER NO. WQ 93-14

BY THE BOARD:

On September 18, 1992, the State Water Resources Control Board (State Water Board) received a petition from Sanmina Corporation (Sanmina), seeking review of site cleanup requirements which the Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) adopted in Order No. 92-107 (Order). The Order was issued to Sanmina and to Charles and Connie Dietrich (the Dietrichs) and requires the completion of certain tasks to determine the nature and extent of ground water pollution, as well as remediation of the site at 1881 Martin Avenue in the City of Santa Clara. Sanmina, as the discharger, was named primarily responsible, while the Dietrichs,

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as landowners, were named secondarily responsible. Sanmina is the only party that seeks review of the Order.<sup>1</sup>

### I. BACKGROUND

The Dietrichs have held an ownership interest in the property at 1881 Martin Avenue since 1965. Santa Clara Circuits (SCC) operated a printed circuit board manufacturing facility at the site from about 1973 until 1986. Sanmina purchased SCC in January 1986, and the facility continued to operate under a lease from the Dietrichs until it was destroyed by fire in October 1986. (Hereafter, all references to Sanmina include actions by its predecessor, SCC.) The facility used and stored onsite metal plating solutions, caustic chemicals, acids, and solvents. A concrete "wet floor" (a sloping floor which drains to a central location) was constructed by SCC in the production area to collect liquid process wastes. This process "wastewater" drained into a concrete wastewater treatment/acid neutralization sump. The treated process wastewater from the sump was then discharged

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<sup>1</sup> Sanmina also requested a stay of the effect of the Order. Because this Order considers the merits of the petition, we will not consider the request for a stay. In addition, several issues regarding the record have arisen. The petition was deemed complete on November 13, 1992. Several requests to extend the time for responses to the petition were received, and an extension until December 23, 1992 was granted. Sanmina, the Dietrichs, the Regional Water Board, and ARA Services (a former tenant at the site) submitted evidence that was not a part of the record before the Regional Water Board. Additionally, in the course of its review of the petition, State Water Board staff generated evidence and notified all parties of its intent to add it, as well as any responses to it, to the record. Only the Dietrichs had submitted a response to this evidence as of September 16, 1993. All of the above evidence is hereby incorporated into the record before the State Water Board. (Water Code § 13320, 23 Calif. Code Regs. §§ 2064, 2066.)

into the city sanitary sewer system and treated at the San Jose/Santa Clara Water Pollution Control Plant (Pollution Control Plant).

Site assessment work was initiated in 1987 in conjunction with the building demolition and has consisted of soil sampling and ground water monitoring. Analysis of the soil samples revealed the presence of elevated concentrations of lead, copper, nickel, and volatile organic compounds (VOCs), including tetrachloroethylene (PCE), trichloroethylene (TCE), and trichloroethane (TCA). The VOCs were detected to depths of twelve feet, but generally found at higher concentrations in the upper six feet of soil below the wet floor of the production area, near the wastewater treatment sump, and near the chemical storage areas. Quarterly ground water monitoring data beginning in 1990 has consistently shown that the VOCs are found in the ground water beneath the site. Concentrations of the VOCs are found in two downgradient wells, but the VOCs are not detectable or near the detection limit in the two upgradient wells. Remediation has included the removal of 500 cubic yards of metals-contaminated soil for disposal. There has been no remediation of the contaminated ground water.

## II. CONTENTION AND FINDING

Contention: Sanmina contends that there is not substantial evidence to support the Regional Water Board's

finding that Sanmina is a responsible party for ground water contamination at the site.<sup>2</sup>

Finding: The Regional Water Board adopted the Order pursuant to Water Code Section 13304. That section, in relevant part, assesses responsibility for cleanup to:

"Any person who has discharged or discharges waste into the waters of this state ... or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance ...."

Sanmina does not dispute the existence of the waste or that it originated from the facility. Instead, Sanmina claims that it never used any of the VOCs found in the ground water and, therefore, did not cause or permit the discharge of the VOCs, which means it cannot be held responsible for the cleanup of the ground water. Sanmina claims that the VOCs were discharged by a prior adjacent tenant.

In reviewing the Regional Water Board's Order, the State Water Board must determine whether there is substantial evidence that Sanmina caused or permitted the discharge of the VOCs. See, e.g., Order No. WQ 85-7 (Exxon Co., U.S.A.); Order No. WQ 86-16 (Stinnes-Western Chemical Corp.); and Order No. WQ 92-13 (Wenwest, Inc.). In Exxon, supra, the substantial evidence requirement was explained:

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<sup>2</sup> All other contentions raised in the petition that are not discussed in this order are dismissed. (Title 23, California Code of Regulations, Section 2052; People v. Barry, 1987, 194 Cal.App.3d 158.)

"Generally speaking it is appropriate and responsible for a Regional Board to name all parties for which there is reasonable evidence of responsibility, even in cases of disputed responsibility. However, there must be a reasonable basis on which to name each party. There must be substantial evidence to support a finding of responsibility for each party named. This means credible and reasonable evidence which indicates the named party has responsibility."

Obviously if, as Sanmina claims, Sanmina did not use or store the VOCs, Sanmina could not have caused or permitted their discharge and, therefore, would not be responsible for their cleanup. Unfortunately, the fire which destroyed the facility in 1986 also destroyed most of Sanmina's records that may have shed some light on the issue of chemical usage. Nonetheless, a good deal of evidence does remain. In considering all of the evidence contained in the record before it, the State Water Board finds that there is substantial evidence that Sanmina caused or permitted the discharge of the VOCs, and that the Regional Water Board's actions in issuing the Order were appropriate and proper.<sup>3</sup>

The State Water Board bases its conclusion on a number of facts in the record, including the following:

1. SCC and its successor-in-interest, Sanmina, operated a printed circuit board manufacturing business from about 1973 to 1986.

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<sup>3</sup> The possibility that Sanmina used the VOCs but did not discharge them to the soil or ground water was not raised in the petition, and is not at issue here. We merely note in passing that concrete (which lined Sanmina's wastewater treatment sump and the wet floor) has previously been found by this Board to be permeable with regard to VOCs. See, e.g., Order No. WQ 86-16 (Stinnes-Western Chemical Corp.). We also note that evidence has been submitted regarding several spills in the chemical storage area.

2. The VOCs were found in the ground water and soil below the wet floor, near the wastewater treatment sump, and near the chemical storage areas.

3. The VOCs have not been attributed to any upgradient source.

4. There is little evidence that any prior tenant or landowner used VOCs.

5. Similar companies in the Santa Clara Valley typically used VOCs.

6. SCC submitted an Industrial Wastewater Discharge Application/Permit to the Pollution Control Plant in 1982 (1982 Permit Application), in which it identified TCA as a chemical that it either used in process, generated in process, or stored on the premises.

7. Sanmina submitted a declaration of a former SCC employee, who stated that Sanmina stored either TCE or TCA at the facility.

Sanmina has advanced two related theories in its attempt to avoid liability. First, Sanmina claims that it never used the VOCs. In support of this assertion, Sanmina submits both an incomplete history of Sanmina's chemical use and declarations from former employees who state that Sanmina never used the VOCs. Second, Sanmina claims that prior tenants used VOCs. To support this assertion, Sanmina submits a declaration from a private investigator and a statement from a former employee, each of whom raise the possibility that a different tenant may have used TCA. Sanmina also raises the issue of an

alleged indoor sump, which it claims it never used, but hypothesizes that it must have been used by a prior tenant who used VOCs.

In response, the 1982 Permit Application and the declaration from Daniel Gonzales (a former employee), establish that TCA, and possibly TCE, was at least stored at the site. Mere storage of the VOCs could, given Sanmina's history of repeated spills, account for some of the VOC contamination at the site. Nonetheless, it is likely that Sanmina also used the VOCs in its manufacturing processes.

The evidence which has been submitted to the contrary appears to be unreliable. For example, Nathaniel Woolsey stated in a declaration that Sanmina never used the VOCs while he was employed (from 1977 to 1986), and that the only solvents that he recalled Sanmina using were acetone and methylene chloride. However, according to other information submitted by Sanmina, Sanmina also used toluene during the period in which Mr. Woolsey was employed.

Sanmina's counsel also contacted Bob Temps, who was employed in an unknown capacity from 1973 to 1986. Mr. Temps stated to Sanmina's counsel that Sanmina had never used TCE, TCA, or PCE. No mention was made of Sanmina's storage of TCA or TCE, nor was a foundation for this statement offered.

It is conceivable that the employees did not always know exactly what chemicals they were using. In the 1982 Permit Application, Sanmina listed two compounds which it used, but Sanmina did not know the chemical composition. Even more telling

is an October 29, 1981, report from the Santa Clara Fire Department. The Fire Department responded to a large cloud of nitric acid coming from the facility, but was told by the misinformed swing shift manager that Sanmina did not even have nitric acid on the premises.

The chemical use history submitted by Sanmina is defective for the same reason, as well as an additional one. The chemical use history only includes information for the years of 1976 and 1982-86. Therefore, it does not preclude Sanmina's use of VOCs during the rest of the relevant time period. The State Water Board acknowledges that, due to the fire, some records may not be available. However, in the face of evidence which establishes the likelihood that Sanmina did use the VOCs, the State Water Board cannot rely on an incomplete chemical use history to conclusively rebut that evidence. Curiously, the chemical use history makes no mention of the use of TCA in 1982, despite the fact that Sanmina included TCA in the 1982 Permit Application.

The State Water Board takes administrative notice of the Regional Water Board's experience and expertise in this area. The Regional Water Board has overseen many cleanups of a similar nature by similar companies in the Santa Clara Valley. The staff of the Regional Water Board has written a report entitled "Waste Acid Neutralization Sumps; The Design and Operation 1960's To 1980's", in which the staff stated that the use of VOCs was common in the electronics industry in the Santa Clara Valley and concluded that discharges of VOCs to soil, and eventually to

ground water, occurred as a result of waste acid neutralization sump failures. Additional evidence in the record corroborates the staff report.

Additionally, Sanmina's claim that prior tenants used the VOCs is relevant for the purposes of this petition only if the prior tenants are solely responsible for the full extent of the VOC contamination at the site. There is insufficient evidence in the record to support such a finding.<sup>4</sup>

Even if Sanmina had produced enough evidence to support finding that a prior tenant discharged some of the VOCs, which it did not, Sanmina would still be properly named as a responsible party. This is because substantial evidence would remain that Sanmina also discharged some of the VOCs. Our conclusion does not preclude the possibility that a prior tenant might also be responsible for a part of the VOC contamination. If Sanmina is able to develop such evidence in the future, Sanmina has the ability to request the Regional Water Board to add that prior tenant to the Order.

Finally, the evidence that has been submitted by Sanmina regarding the existence of an indoor sump is unpersuasive. The Dietrichs submitted photographs of the site after the fire, which do not show anything which looks like a sump, and the project manager conspicuously failed to mention

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<sup>4</sup> Sanmina submitted a declaration from Nichols Smith, a private investigator, in which Mr. Smith recounted a conversation he had with Frank Christensen, the former President of Tempress Industries, a prior tenant, in which Mr. Christensen stated that "it is entirely possible that [Tempress] used a small amount of TCA to wipe smudges off machinery." The rest of the evidence submitted by Sanmina on this issue is inadmissible as unsupported hearsay. (See 23 Calif. Code Regs. § 648.4(d).)

actually seeing a sump during the demolition of the building. Even if the existence of a sump were established, the proximity of its alleged location to the wet floor would fail to demonstrate that the VOC contamination in that area originated from the sump, and not the wet floor.

III. CONCLUSION

There is sufficient evidence in the record to support naming Sanmina in the Order.

IV. ORDER

IT IS HEREBY ORDERED that the petition is denied.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held October 19, 1993.

AYE: John Caffrey  
Marc Del Piero  
James M. Stubchaer  
Mary Jane Forster  
John W. Brown

NO: None

ABSENT: None

ABSTAIN: None

  
Maureen Marché  
Administrative Assistant to the Board